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Filing date: **06/02/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057757
Party	Defendant Jewcy Media, LLC
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Signature	/Jason Vogel/
Date	06/02/2014
Attachments	2014-6-2 Reply to Retitioner's Remarks (Avalanche v. Jewcy Media- Can. No. 92057757).pdf(113734 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AVALANCHE, LLC,

Petitioner,

v.

JEWCY MEDIA, LLC,

Registrant.

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) Cancellation No. 92057757
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REGISTRANT’S REPLY TO PETITIONER’S REMARKS

Although it is within the Board’s discretion to accept a reply, Registrant, Jewcy Media, LLC (“Jewcy”), respectfully requests that the Board consider this brief reply in response to Petitioner’s paper filed with the Board on May 23, 2014. Jewcy believes this reply is necessary in light of the numerous material mischaracterizations of the facts and law made by Petitioner in that document.

1. Petitioner repeatedly conflates the difference between non-use and abandonment. Abandonment requires discontinuance of use plus an intention not to resume use. Regardless of use or lack of use, Jewcy’s Reg. No. 3,228,371 (the “Registration”) was never adjudicated as abandoned and therefore did remain in full force and effect at all times up until its cancellation under Section 8 on October 10, 2013. As such, despite Petitioner’s statements to the contrary, Dkt. #9 at 4-5, the Registration was a perfectly legitimate basis for both Jewcy’s Letter of Protest and Opposition against Petitioner’s application. Moreover, the Letter of Protest and Opposition were also based (and the Letter of Protest granted) upon Jewcy’s other registrations, including App. No. 85235901 (now Reg. No. 4293528), which is indisputably in full force and effect and in use for the registered goods.

2. Petitioner materially misstates the facts and law relating to the standards for avoiding a judgment as articulated in Rule 2.134(b) and in the Board's Order to Show Cause dated March 27, 2014, by saying that the only permitted bases are inadvertence or mistake. Dkt. #9 at 1, 5. In fact, Rule 2.134 has no such statement whatsoever, and the Order to Show Cause merely lists inadvertence or mistake as examples of good and sufficient cause. Moreover, the clear case law identified by Jewcy in its Response to Order to Show Cause establishes that the facts of the present case (i.e., Avalanche's filing of the Cancellation Action mere weeks before the Section 8 deadline) represent good and sufficient cause to avoid judgment, and the Board's Order dated April 24, 2014 reflect its agreement. *See* Order, Dkt. #8

3. Petitioner misleadingly states that it "had to file" the petition to cancel because it was facing a deadline to respond to an office action in which Jewcy's mark was cited as an obstacle. *See* Dkt. #9 at 2. In fact, the office action was non-final, and therefore Petitioner could have simply entered a statement that the cited registration would likely soon be canceled, or that it was negotiating with Jewcy for a consent. Doing so would have satisfied the deadline and resulted in a further final office action being issued with a response deadline well after Jewcy's final Section 8 deadline.

4. Petitioner erroneously accuses Jewcy of falsely denying Petitioner's allegation that Jewcy was not making use in commerce in the Answer. *See* Dkt. #9 at 3. As stated in the Answer, whether or not a mark is in use in commerce is a legal conclusion to which no response was required. Therefore, the allegation was not falsely denied.

5. In any event, all of the matters raised by Petitioner and discussed above are a distraction, and are irrelevant to the issue at hand. The Board's Order dated April 24, 2014 specifically invited Petitioner to elect one of two options: a) to go forward with the cancellation

proceeding, or b) have the cancellation proceeding dismissed without prejudice as moot. If Petitioner wished to litigate the issues it raised, it should have opted to proceed with the cancellation, which would have been patently absurd, and a waste of judicial resources, given that the registration at issue is already dead. Instead, the Petitioner is inappropriately trying to bootstrap the matter into a finding of abandonment without having to adjudicate the issue.

In light of the foregoing, Registrant respectfully requests that the Board dismiss the present action without prejudice as moot.

Dated: New York, New York

June 2, 2014

Respectfully submitted,

**KILPATRICK TOWNSEND &
STOCKTON LLP**

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Attorneys for Registrant

CERTIFICATE OF TRANSMITTAL

I hereby certify that a true copy of the foregoing Registrant's Response to Order to Show Cause is being filed electronically with the TTAB via ESTTA on this day, June 2, 2014.

/s/Jason Vogel
Jason Vogel
Attorney for Registrant

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AVALANCHE, LLC)	
)	
Petitioner,)	
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v.)	Cancellation No. 92057757
)	
JEWICY MEDIA, LLC,)	
)	
Registrant.)	
)	

CERTIFICATE OF SERVICE

A true and correct copy of the attached document has been served on counsel for
Petitioner via first class mail addressed as follows:

Ury Fischer
Stephen D. Lott
P.O. Drawer 141098
Coral Gables, FL 33114-1098

Dated: June 2, 2014

/s/ Jason Vogel
Jason Vogel